Venture Industries, Inc. (formerly Vemco, Inc.) *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, Petitioner. Case 7–RC–19035

March 19, 1999

SUPPLEMENTAL DECISION, DIRECTION, AND ORDER

BY MEMBERS FOX, LIEBMAN, AND BRAME

The National Labor Relations Board, by a three-member panel, has considered objections and determinative challenges in a rerun election held August 8, 1996, and the hearing officer's report (pertinent portions are attached) recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement,[1] and a Supplemental Decision and Order issued by the Board on September 30, 1994. The tally of ballots shows 154 for and 139 against the Petitioner, with 118 challenged ballots.[2]

The Board has reviewed the record in light of the exceptions and briefs and adopts the hearing officer's findings[3] and recommendations[4] only to the extent consistent with this decision.

For the reasons stated below, we find merit in the Employer's exceptions to the hearing officer's recommendations to sustain the challenges to the ballots of 9 employees whom the hearing officer had excluded on community of interest grounds.[5] Accordingly, contrary to the hearing officer, we shall overrule the challenges to these 9 ballots and direct that they be opened and counted. We adopt the hearing officer's findings in other respects.

1. *The hearing officer's exclusion of nine employees on community of interest grounds*: The Petitioner challenged, inter alia, Adado's ballot asserting that he was ineligible as a contract employee. The Petitioner also challenged the ballots of employees Bontumasi, Gach, Hameline, Hansel, Shaffer, Tanis, Thompson, and Winger on the ground that they were supervisors under Section 2(11) of the Act. No evidence was presented at the hearing, however, to establish that Adado was a contract employee or that the other eight disputed employees were statutory supervisors. Rather, the Petitioner argued that these nine employees should be excluded from the stipulated unit because they lack a community of interest with the unit employees.

Although the hearing officer recognized that the stipulated bargaining unit includes "all full-time and regular part-time employees" and that these disputed employees did not work in any of the specifically excluded categories, he nonetheless applied the community-of-interest test and recommended that the nine employees be excluded from the bargaining unit. The hearing officer stressed that the Board conducted the rerun election in this case nearly 7 years after the parties had entered into the Stipulated Election Agreement on August 15, 1989. Based on this lapse of time, the hearing officer did "not believe that it [could] be said with clarity who the parties intended to include in the unit merely by looking at the unit description." Accordingly, the hearing officer, citing, inter alia, *R. H. Peters Chevrolet,* 303 NLRB 791, 792 (1991), found that the challenges to these ballots should be analyzed under community of interest principles. Doing so, he found the nine employees lacked a community of interest with other unit employees and he recommended the challenges to their ballots should be sustained. We disagree.

It is well established that, when resolving determinative challenged ballots in cases involving stipulated bargaining units, "the Board will rely on the scope of the stipulation itself, with its various inclusions and exclusions, unless it is contrary to any express statutory provisions or established Board policies." *Wells Fargo Alarm*

[1] The stipulated unit is "All full-time and regular part-time employees employed by the Employer at its facility located at 10230 North Holly Road, Grand Blanc, Michigan; but excluding office clerical employees, professional employees, confidential employees, sales employees, draftsmen, guards and supervisors as defined in the Act."

[2] The parties later stipulated to the following: (1) that 22 of the challenged ballots were cast by eligible voters and that the challenges to their ballots should be overruled, and (2) that 27 other challenged ballots were cast by ineligible voters and that the challenges to their ballots should be sustained. We shall direct that the 22 challenged ballots that the parties stipulated were cast by eligible voters be opened and counted. The remaining 69 challenged ballots are a sufficient number to affect the election results.

[3] The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.,* 118 NLRB 1359, 1361 (1957). We find no basis for reversing the findings.

[4] In adopting the hearing officer's recommendation to overrule the Employer's Objection 3 alleging that the Petitioner and its agents "unlawfully" defaced the Board's Notice of Election, we note that there is no evidence that an agent of the Petitioner defaced the notice. We also note that the Notice of Election used here specifically included language disavowing Board participation or involvement in any defacement and specifically asserting the Board's neutrality in the election process. Therefore, we find that the Employer's Objection 3 has no merit. See *Brookville Healthcare Center*, 312 NLRB 594 (1993).

In the absence of exceptions, the Board adopts, pro forma, the hearing officer's recommendation that the challenges to the ballots of Mark Fittante, Lasky Genoa, Darrell Myers, and Scott Parker be overruled and that their ballots be opened and counted, and that the challenges to the ballots of Gary Ballard, Julie Barnett, William Best, Ed Boyden, Robbie Clifton, Deborah Dobler, Lisa Gartee, Carl Grant, Burt Hirons, Robert Mitchell, Lisa Snelling, Arla Trantham, Joseph Williams, Erie Willis, Denise Witucki, Joseph Zaragaza, and Robert Zientek be sustained.

[5] These employees and their job titles or responsibilities are as follows: Joseph Adado, production control; Anthony Bontumasi, Richard Gach, and Clayton Hameline, customer service representatives; Mark Hansel, safety technician; Timothy Shaffer, continuous improvement team; Mark Tanis, continuous improvement ("Kaizen") coordinator; Charles Thompson, quality system coordinator; and Monica Winget, product engineer.

Services, 289 NLRB 562 (1988).[6] When the objective intent is clear, the Board will hold the parties to their agreement.[7] If, however, the objective intent is ambiguous, the Board will apply the community-of-interest doctrine in order to resolve the challenged voter's eligibility status.[8]

Here, as the hearing officer noted, the parties agreed to the inclusion of "all full-time and regular part-time employees" and none of these employees worked in any of the classifications that the election stipulation specifically excluded from the bargaining unit. Although the parties executed this stipulation in 1989, we stress that the rerun election was conducted using the identical stipulated bargaining unit and that no party has argued that circumstances have changed in the meantime so as to require the exclusion of any of these employees. We specifically note that neither the Employer nor the Petitioner has asserted that any of the job classifications in which these employees worked at the time of the rerun election did not exist as of the time that the parties entered into the election stipulation.

Thus, based on the plain language of the stipulation itself, we conclude that the intent of the parties to include these employees is clear and unambiguous.[9] As the Second Circuit stated in *Tidewater Oil Co. v. NLRB*, 358 F.2d 363, 366 (1966):

> In our view no established Board policy or goal of the Act is contravened by including [the employee]. We view community of interest as a doctrine useful in drawing the borders of an appropriate bargaining unit, a function well within the discretion of the Board. But we do not conclude that the doctrine remains as an established Board policy sufficient to override the parties' intent when the Board, in the interests of furthering consent elections, allows the parties to fix the unit.

The Petitioner has not shown in this case that the inclusion of these employees would be inconsistent with "any express statutory provisions or established Board policies." See *Wells Fargo Alarm Services*, supra. Accordingly, we overrule the challenges to the ballots of these nine employees and direct that their ballots be opened and counted.

2. *The hearing officer's exclusion of 21 challenged voters as statutory supervisors*: The Employer, with headquarters in Fraser, Michigan, is a plastics injection molding company that supplies parts to the three major domestic automobile manufacturers. Its human resources director, Joan Bartus, was the only person who testified regarding the Employer's operations, and she credibly discussed as a group these 21 alleged supervisors who are classified as either department or line supervisors.[10]

It is undisputed that the line and department supervisors have the authority to issue oral or written reprimands to employees concerning production and attendance. When a supervisor decides to issue a reprimand, he discusses it with the employee, has the employee sign it, and then sends it to the human resources department to be placed in the employee's personnel file. It is also undisputed that the Employer has a progressive disciplinary system, and that, pursuant to that system, the department and line supervisors have the authority to recommend that an employee be suspended. If a supervisor recommends suspension of an employee, he meets with both Bartus and his department manager to discuss this proposed discipline. Bartus testified that the supervisor's recommendation to suspend the employee is followed about 75 percent of the time. Although this group usually makes an immediate decision on whether to suspend an employee without any further investigation, Bartus said that the department manager conducts a followup investigation about 30 to 40 percent of the time to hear the employee's side of the incident.

The line and department supervisors are not responsible for hiring employees, but they do interview existing employees with regard to in-plant postings, which apparently include both transfers and promotions. The department or line supervisor involved interviews the applicants and makes a recommendation to his department manager as to which applicant should be selected. Bartus testified that the managers follow the supervisors' recommendations about 80 to 90 percent of the time.

We find on this record that the department and line supervisors possess supervisory authority within the mean-

[6] See also *SCM Corp*., 270 NLRB 885 (1984*); White Cloud Products*, 214 NLRB 516, 517 (1974); *Tribune Co.*, 190 NLRB 398 (1971); and *NLRB v. Emro Marketing Co*., 768 F..2d 151 (7th Cir. 1985).

[7] *Prudential Insurance Co*., 246 NLRB 547, 548 (1979).

[8] *Lear Siegler*, 287 NLRB 372 (1987).

[9] We find, contrary to the hearing officer, that *H. P. Peters Chevrolet*, supra, is distinguishable because the parties' intent there regarding the disputed service advisor classification was ambiguous in that the express language of that stipulation neither specifically included nor excluded those employees. Here, the election stipulation specifically included "all full-time and regular part-time employees" with specific exclusions that did not include the positions these nine employees held.

[10] These alleged supervisors and their job titles are as follows: Daniel Addis, plant automation supervisor; Greg Asbury, molding supervisor; Terri Birtzer, airbag line supervisor; Randy Brege, manual line supervisor; Ken Brewer, fascia supervisor; Al Chaffin, prototype supervisor; Gregory Cooper, maintenance supervisor; Timothy Coots, plant engineer/manager; Laura Copenhaver, quality manager/supervisor; Leslie Ferguson, airbag molding supervisor; Timothy Grantham, quality manager/supervisor; Johnny Hill, fascia supervisor; Walter Kellogg, molding supervisor; David McLaughlin-Smith, molding supervisor; Edward Pomazanko, paint kitchen supervisor; Scott Porter, airbag paint supervisor; Kelly Sherosky, manual line supervisor; George Smith, molding maintenance supervisor; Jeffrey Snelling, maintenance supervisor; Will Stephens, maintenance supervisor; and Michael Verkennes, manual line supervisor.

No exceptions were filed to the hearing officer's further findings that challenged voters Ed Boyden, Burt Hirons, and Robert Zientek are statutory supervisors and, as stated in fn. 4 above, we sustain the challenges to their ballots.

ing of Section 2(11) of the Act to discipline employees and to make effective recommendations regarding the selection of production employees to fill in-plant jobs. See *CTI Alaska, Inc*., 326 NLRB 1121 (1998); *Delta Carbonate, Inc.,* 307 NLRB 118, 119–120 (1992).[11] Accordingly, we adopt the hearing officer's recommendation to sustain the challenges to their ballots.

ORDER

IT IS DIRECTED that the Regional Director for Region 7 shall, within 10 days from the date of this decision, open and count the ballots of Joseph Adado, Dion Bean, Cindy Bennett, Anthony Bontumasi, Darwin Brewer, Jason Coenen, Donnna Drew, John Dunning, Daniel Ethington, Mark Fittante, Richard Gach, Lasky Genoa, James Hale, Clayton Hameline, Mark Hansel, Keith Holland, Kevin Holland, Craig Kirbitz, Steven Laporte, Anita McLean, Geraldine Miller, Michael Miller, Darrell Myers, Vickie Netzloff, Scott Parker, Denver Pipkin, Thomas Reek, Daniel Roach, Catherine Robison, Joseph Rockwell, Robert Rossman, Brent Scharrer, Timothy Shaffer, Ricky Simpkins, Mark Tanis, Charles Thompson, Teresa Thompson, Donald Trepanier, Barbara Vukelich, Monica Winget, and Duane Wagner, and thereafter prepare and cause to be served on the parties a revised tally of ballots, on which basis he shall issue the appropriate certification.

IT IS FURTHER ORDERED that the matter is referred to the Regional Director for Region 7 for further processing consistent with this Supplemental Decision, Direction, and Order.

MEMBER LIEBMAN, concurring.

I agree with my colleagues in all respects except as to the particular grounds for finding that the line and department supervisors are statutory supervisors within the meaning of Section 2(11) of the Act (and thus ineligible to vote in the election).

I find the statutory supervisory status of these individuals to be a very close question. They spend 80 to 90 percent of their time performing unit work and share the same benefits as hourly employees. To the extent that they have some responsibilities for assigning and directing routine work tasks and making sure that the work in their department is done properly, they function essentially as experienced production leadmen. See, e.g., *Brown & Root, Inc*., 314 NLRB 19, 20–22 (1994) (leadmen; party chiefs). Moreover, as the Employer argues, these individuals, like the hourly work force in general, exercise certain responsibilities in the context of an organizational structure which uses a collaborative and team approach to determining how work will be done, and who will perform that work, and how production problems will be resolved. Thus, insofar as these individuals are involved in operational decisionmaking, they share that authority with other employees and are invested, not with supervisory authority as contemplated by Section 2(11), but rather with enhanced job "empowerment" or accountability.

In nevertheless finding these individuals to be statutory supervisors, I rely only on the authority of these supervisors effectively to recommend promotion and reassignment of employees, by interviewing, selecting, and recommending to department managers employees who have applied for in-plant job vacancy postings. The undisputed testimony is that their recommendations are followed 80 to 90 percent of the time. Accordingly, I find it unnecessary to pass on my colleagues' conclusion that these individuals are supervisors based on their authority to effectively recommend discipline, or any of the other asserted grounds for finding these individuals to be statutory supervisors. Since Section 2(11) is to be read in the disjunctive, and a disputed employee need only possess one of the indicia set forth in order to qualify as a statutory supervisor, I am constrained to agree that, on this record, these individuals meet the statutory definition of supervisor.

APPENDIX

HEARING OFFICER'S REPORT

Joseph Adado; Anthony Bontumasi; Richard Gach; Clayton Hameline; Mark Hansel; Timothy Shaffer; Mark Tanis; Charles Thompson; and Monica Winger

There is certain evidence that is common to all of the above challenged voters and I will therefore discuss their eligibility as a group. The Petitioner challenged the ballot of Joseph Adado, asserting that he was ineligible because he was a contract employee. The Petitioner challenged the ballots of Anthony Bontumasi, Richard Gach, Clayton Hameline, Mark Hansel, Timothy Shaffer, Mark Tanis, Charles Thompson, and Monica Winger, asserting that they were ineligible because they were supervisors within the meaning of the Act. No evidence was presented to establish that the above employees are supervisors. Rather, the Petitioner asserts that the above employees do not share a community of interest with the other unit employees.

Bartus testified that none of the nine employees referred to above are considered to be supervisors or managers. All are paid by salary and receive the same fringe benefits as other salaried employees. They all receive a salary which is the same or higher than that received by the Employer's supervisors. Like other salaried employees, they do not receive overtime pay, but Adado, Bontumasi, Gach, Hansel, and Tanis receive supplemental pay. They do not receive bonuses. None were required to hold a particular degree as a requirement for their job.

Bartus testified that Joseph Adado is involved in production control for the Employer. He has a cubicle in the administration office, and serves as a coordinator between the Employer's customers and plant personnel in scheduling what will be produced to meet the needs of the customers. He reports to Operations Manager Bill Hart. According to Bartus, he spent about 40 percent of his time on the phone dealing with customers,

[11] In light of this finding, we find it unnecessary to pass on the hearing officer's finding that the department and line supervisors also have the authority to assign and direct work and effectively recommend the discharge of employees.

about 30 percent of his time with line management, and about 30 percent of his time on the work floor with shipping and receiving employees.

Bartus stated that at the time of the election Anthony Bontumasi, Richard Gach, and Clayton Hameline were customer service representatives. According to Bartus, Hameline had been the manual line manager until March 1996, when he became a customer service representative. After the election, Hameline was promoted to the position of second shift manager. According to Bartus, the three individuals divided up the Employer's products to service the customers for each product. She said that they spent about 50 percent of their time meeting with customers, and about 50 percent of their time in the plant dealing with managers and quality control employees. Their job is to meet with customers concerning the quality of the Employer's products. If a customer has problems with parts, they sort through the parts in an attempt to determine which parts will be accepted by the customer. When there are quality problems, they will meet with managers and employees in the plant in an attempt to reach solutions to those problems and to verify if problems in production do exist. They report to the department managers who produce the parts they service. Bartus stated that if a major change in the Employer's production process was needed, they would take up the issue with the General Manager. The Employer asserted that the three customer service representatives did a form of production work by sorting parts at the plants of customers, but I believe that their work is dramatically different from that of quality techs who go to the plants of customer's to sort parts. The customer service representatives are representing the Employer when they meet with customers and are trying to convince the customers as to which parts should be accepted. Moreover, it is the job of the customer service representatives to meet with customers on a daily basis while it is not for the quality techs Bartus testified that Mark Hansel was the Employer's safety technician. She stated that Hansel reported to her, and that he shared an office with her assistant, Pam Moore, in the administration building. He was responsible for conducting accident investigations and enforcing MIOSHA regulations in the plant. She stated that he spent about 80 percent of his time in safety training with hourly employees. He did not perform production work in the plant, but did work with other employees on the Employer's phone system.

Bartus stated that Timothy Shaffer was responsible for CIT (Continuous Improvement Team) implementation and that Mark Tanis was the Employer's "Kaizen" coordinator, a term referring to continuous improvement. She stated that both reported to Bill Hart, and both worked out of the offices of supervisors. She stated that their responsibilities are similar. Shaffer spends 90 percent of his time meeting with employees to assist them in continuous improvement and in improving their productivity, whereas Tanis meets with employees and trains them concerning the Kaizen principle. Their work is related to the Employer's QS 9000 policy and of meeting the Employer's goal of improving productivity. They do not perform any production work. They meet with employees at various places in the plant including in breakrooms and in the training room. Bartus stated that Charles Thompson was the coordinator and responsible at the time of the election for the implementation of the Employer's QS 9000 system, a quality system which the Employer must have to make sure that its products meet the requirements of its customers. He had an office in the administration building, and reported to Bill Hart. In his job, he performed audits and worked with quality managers and other managers to make sure that the QS 9000 system was working and that employees were in compliance with customer requirements.

Bartus testified that Monica Winget was the Employer's product engineer. She had a cubicle in the administration building, and reported to Bill Hart. She worked with the Employer's engineering staff, vendors, and customers when the Employer had new product launches. She was responsible for assuring that the Employer had the necessary materials to produce its products and that production lines were set up properly to produce parts.

I believe that the record testimony establishes that Joseph Adado, Anthony Bontumasi, Richard Gach, Clayton Hameline, Mark Hansel, Timothy Shaffer, Mark Tanis, Charles Thompson, and Monica Winget do not share a community of interest with the other unit employees who voted in the election. All are salaried and receive a salary that is at least that of supervisors. Several receive supplemental pay; Hameline did not because his salary was higher than the two other customer service representatives. The nature of their work, where they work, and who they report to is dramatically different from that of hourly employees employed in the unit. For these reasons, I recommend that the challenges to their ballots be I sustained.

In concluding that the nine employees cited above should be excluded from the unit, I realize that the stipulated unit includes "all full-time and regular part-time employees." The stipulated unit then excludes certain categories of employees. While the nine employees referred to above do not appear to be employed in any of the excluded categories, I do not believe that they should automatically be considered to be part of the appropriate unit because it includes "all" employees. The Board's policy is to honor the stipulations of the parties unless their intent is unclear or the stipulation is ambiguous. With the election being held nearly 7 years after the Stipulated Election Agreement was approved on August 15, 1989, I do not believe that it can be said with clarity who the parties intended to include in the unit merely by looking at the unit description. For that reason I believe it is necessary to utilize community-of-interest principles to resolve the above unit placement issues. *R. H. Peters Chevrolet,* 303 NLRB 791, 792 (1991); *Viacom Cablevision,* 268 NLRB 633 (1984). It is noteworthy that during the hearing, both the Employer and Petitioner litigated the eligibility of the nine employees based on a community-of-interest test. Neither party, during the hearing or in their briefs, has asserted that the above employees should be included or excluded from the unit based on a simple reading of the unit description.